

1 UNREDACTED

2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE WESTERN DISTRICT OF TENNESSEE
4 EASTERN DIVISION

5 UNITED STATES OF AMERICA)
6 VS) NO. 1:20-cr-10063-STA
7) JACKSON, TENNESSEE
8 JASON WAYNE AUTRY)

9 MOTION HEARING

10 APRIL 21, 2023

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13 BEFORE THE HONORABLE S. THOMAS ANDERSON,
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15 UNITED STATES DISTRICT JUDGE

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21 KRISTI HEASLEY, RPR
22 OFFICIAL COURT REPORTER
23 U.S. COURTHOUSE, SUITE 450
24 111 SOUTH HIGHLAND AVENUE
25 JACKSON, TENNESSEE 38301

UNREDACTED TRANSCRIPT

1 APPEARANCES

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1 EXAMINATION INDEX

2 NO TESTIMONY OFFERED

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NO EXHIBITS MARKED

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2 (Defendant Present.)

3 THE COURT: This is United States versus

4 Jason Wayne Autry, No. 21-10063.

5 We're here today -- originally we had a
6 sentencing scheduled for today. Counsel filed, defense
7 counsel filed a motion to continue the sentencing
8 hearing, and then also the Court's received a letter from
9 the defendant asking some questions and indicating some
10 dissatisfaction with his current situation.

11 Just for reference, it looks like the
12 letter from Mr. Autry is Docket Entry Number 76.

13 Ms. Sullivan, do you want to be heard?
14 Where are we as far as you're concerned?

15 MS. SULLIVAN: Your Honor, at this point,
16 because you set it for a motion in court today, I would
17 like to go ahead and -- and I can follow it up with a
18 written motion. But I sort of alluded to it in my motion
19 to continue that I was anticipating filing a motion to
20 withdraw, or I was at least seeking the Tennessee Bar's
21 Ethics Attorney's opinions on what my position should be
22 in front of the Court.

23 So for today, if the Court would indulge
24 me, I would like to be heard on a motion to withdraw as
25 counsel.

1 THE COURT: Well, let me ask you this.

2 Have you had a chance to meet with Mr. Autry and discuss
3 his letter and some of the concerns he expressed in his
4 letter, or are you not comfortable doing that?

5 MS. SULLIVAN: Your Honor, it's not as
6 much a matter of comfort as it a matter of diminishing
7 returns at this point.

8 I have not met with him about that letter.
9 And part of the reasons is just, I just got out of a six
10 week jury trial, and in a week I'm about to go to Georgia
11 and try another four to five week jury trial, and I
12 haven't gotten a chance to get over here to do that.

13 I will tell the Court that these
14 discussions to varying degrees have been going on for
15 over a year. And there have been various delays based on
16 the discussions already, including an emphatic decision
17 to plead guilty on Mr. Autry's part about eight or nine
18 months ago, only to get in court and find out that, for
19 the very first time, he's having, he was having issues
20 related to mental health. And we had to delay that
21 hearing, and send him to be evaluated.

22 So I had him, out of an abundance of
23 caution, evaluated to protect some of the conversations
24 that we had had then.

25 I will say at this point, I've consulted

1 with the Bar about Rule 1.16. And I think we're still in
2 the may, and not like a mandatory withdraw, but we're in
3 the may category.

20 And I will say that there are many things
21 in that letter that are absolutely false as far as my
22 representation. And it puts me in a very difficult place
23 at sentencing, in trying to present witnesses, et cetera,
24 when -- we discussed at length about a motion to
25 suppress. I discussed at length with the government

1 about the possibility of a motion to suppress, the basis
2 for a motion to suppress.

3 I have never in my career used the words,
4 you're going to make the government mad, so we shouldn't
5 pursue this legal remedy, or this pre-trial motion,
6 because we're going to make the government mad.

7 And that was discussed well in advance of
8 not only the first hearing to change plea, but also the
9 second hearing to change plea. And at no point was a
10 decision made by Mr. Autry to file a motion to suppress.

11 So I'm just in a very difficult position
12 right now, because -- I think the Court is in a very
13 difficult position, quite frankly, because it appears
14 that that letter is setting up some post-conviction
15 relief. And to allow me -- to force me to go on with a
16 sentencing hearing, to file objections to the PSR, or to
17 file a sentencing memorandum, when it already appears
18 Mr. Autry is likely laying a foundation for
19 post-conviction relief, that --

20 THE COURT: Well, the letter, though -- if
21 we're both looking at the same letter, he asks if he can
22 have access to certain documents. And then he basically
23 is talking about a breakdown in communication; which, I
24 hear allegations of breakdown in communication probably
25 once a week.

1 MS. SULLIVAN: Right.

2 THE COURT: So breakdown in communication,
3 at least in my opinion, is not cause for mandatory
4 withdraw of any kind.

5 MS. SULLIVAN: I agree.

6 THE COURT: Now is there another letter or
7 something that you're referring to that I'm overlooking?

8 MS. SULLIVAN: Well, the first page of the
9 letter is talking about, that I refused to file a
10 suppression motion. It might be on the second page. So
11 I think it's a little more than a breakdown in
12 communication, but --

13 THE COURT: Well, again, I'm just -- this
14 is Docket Entry Number 76. Mr. Autry just tells me his
15 name. States, I have some questions. Can I have a copy
16 of my mental health evaluation? Can I get a copy of the
17 presentence report? Asked about mitigation. Possibility
18 of a mitigation specialist. Then asks, can he speak to
19 the -- what he calls the DA, but the Assistant United
20 States Attorney regarding any kind of relief that he
21 might, he thinks he might be entitled to.

22 And then he goes into -- my attorney, I
23 have reached out to her, and she hasn't responded.

24 But again, that's not an uncommon
25 complaint. I'm not saying it's true or false or in

1 between, but it's not an uncommon situation, especially
2 when you've got someone incarcerated and -- you just said
3 you had been tied up for the last six weeks, sounds like.

4 MS. SULLIVAN: I think -- are you looking
5 at Docket Entry 76?

6 THE COURT: I am.

7 MS. SULLIVAN: There is also a Docket
8 Entry 73 that was a letter that was filed under seal.
9 That's the one I was referring to, Your Honor.

10 THE COURT: Would you print that out for
11 me, Mr. Bryson?

12 MR. MORROW: Your Honor, just for the
13 record, the government does not have a copy of Docket No.
14 76. Ms. Sullivan gave us a copies of another letter,
15 which is Docket No. 73.

16 MS. SULLIVAN: I don't believe I have a
17 copy of 76.

18 MR. MORROW: I don't think either one of
19 us have a copy of No. 76.

20 THE COURT: Well, it was filed under seal
21 on the -- why would you not -- why would you not get a
22 copy, I wonder?

23 MR. MORROW: If it's filed under seal, the
24 other side would have --

25 THE COURT REPORTER: I didn't hear what

1 you said.

2 MR. MORROW: I said, if it's filed under
3 seal, the other party would have to send a copy to us.

4 THE COURT: But, Ms. Sullivan, I assume --
5 did you receive it?

6 MS. SULLIVAN: I know 73 was emailed to me
7 by the Court. Ms. Smith might have emailed me 76 too. I
8 did email 73 to the government.

9 THE COURT: All right. For the record,
10 now I have a copy of Docket Entry Number 73, which also
11 appears to be a handwritten letter signed by Mr. Autry,
12 four page letter, it would appear. Let's see, it's
13 dated -- looks like it was filed on February 21st of this
14 year.

15 MS. SULLIVAN: Yes. That's the one that I
16 have. I don't have a copy of 76.

17 THE COURT: Well, Mr. Bryson, if you will,
18 print a copy of Docket Entry 76 and provide it to Ms.
19 Sullivan.

20 MS. BOSWELL: Your Honor, are we allowed
21 to have a copy of that as well?

22 THE COURT: Well, let's let Ms. Sullivan
23 look at it first. I think I pretty well outlined it on
24 the record so far, so you have a pretty good idea of what
25 we're dealing with.

1 Let's let Ms. Sullivan take a look at it
2 and then -- I would think -- again, I think I've outlined
3 it on the record already.

4 It would appear to the Court that -- well,
5 Docket Entry Number 73 is much longer and much more
6 detailed as far as some of Mr. Autry's concerns.

7 Did you say you had 73?

8 MR. MORROW: Yes, Your Honor.

9 THE COURT: Okay. All right. Let's take
10 these together.

11 So, Ms. Sullivan, let me start all over as
12 far as asking you.

13 So based on the contents of Docket Entry
14 73 and Entry 76, do you believe that there is mandatory
15 withdraw, or just permissive?

16 MS. SULLIVAN: Your Honor, I really think
17 we're in the permissible withdraw. It's getting very
18 close to the mandatory; however, I think we're still in
19 the permissible.

20 However, as an ancillary issue for the
21 Court to consider, along with mandatory or permissible
22 withdraw, we have what appears to be in Docket Entry 73
23 some foundation for potential post-conviction relief
24 issues.

25 And while that's also not foreign to the

1 Court, or to defense lawyers, it does put me in a
2 difficult position where we are right now. One of the
3 factors is whether it would -- I'm going to mess up the
4 words -- but basically, put the defendant in a position
5 where he might be harmed.

6 And at this point, the PSR has been done.
7 There is still potential for him to have a CJA lawyer
8 appointed to him who can do all the mitigation work, at
9 least up until the judgment is final. And so then the
10 only post-conviction relief issues, as far as it pertains
11 to me, would be the negotiations leading up to
12 sentencing.

13 However, if I'm reading that letter right,
14 based on my experience, there seems to be some foundation
15 being laid for post-conviction relief. And if that's the
16 case, me filing additional pleadings with the Court
17 potentially opens the door for even more post-conviction
18 issues down the road.

19 So I don't know whether it's prudent or
20 expeditious at this point to continue and allow those
21 issue to keep going, or -- and also some of the things in
22 that letter, in my opinion, are false.

23 And so it is putting me in a difficult
24 position down the road to know what things I can present
25 to the Court outside of a motion hearing, where it may

1 have more ramifications than just speaking candidly to
2 the Court in a motion to withdraw.

3 THE COURT: Okay. Are you Jason Wayne
4 Autry?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Mr. Autry, pull
7 that -- move close to one of those microphones, if you
8 can.

9 You sent me a couple of letters.

10 Is that correct?

11 THE DEFENDANT: That's correct, sir.

12 THE COURT: All right. And you heard us
13 refer to those this morning as Docket Entry No. 73 and
14 76.

15 Do you know what I'm referring to?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. First, Mr. Autry, let
18 me caution you. Don't say anything about the facts of
19 your case. Okay?

20 Now we're at a point where you've already
21 entered a plea of guilty in your case. There has been an
22 evaluation, as you know. And we're ready for sentencing.
23 But I still don't want you to say anything that the
24 government could use against you in any way.

25 Do you understand?

1 THE DEFENDANT: (Witness nods.)

2 THE COURT: Answer out loud.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Don't say anything
5 about the facts of your case. We're strictly -- this
6 morning, all I'm trying to decide is whether it's
7 appropriate to allow Ms. Sullivan to withdraw and appoint
8 you a new attorney. Okay?

9 So in the most recent letter that you sent
10 it looks like it's dated March 20th, which roughly a
11 month ago.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You asked some questions.

14 Do you agree?

15 THE DEFENDANT: Yes, sir. About --

16 THE COURT: Some document that you would
17 like to have access to. And I'm assuming since you're
18 asking for those, that --

19 THE DEFENDANT: Well, one of them --

20 THE COURT: Wait. Let me finish.

21 Either you haven't received them, or as
22 far as you know you haven't received them.

23 Is that right?

24 THE DEFENDANT: Well, one of them came
25 while I was in the booth there.

1 THE COURT: And then you go on to say that
2 you have made repeated attempts to contact Ms. Sullivan
3 and she hasn't responded.

4 || Is that true?

5 THE DEFENDANT: That's correct.

6 THE COURT: All right. You heard what Ms.
7 Sullivan had to say this morning. Correct?

8 THE DEFENDANT: Yeah.

11 || THE DEFENDANT: Yeah.

12 THE COURT: And basically, she is telling
13 the Court that she's not sure that she can continue to
14 represent you --

15 THE DEFENDANT: I feel equal, the same
16 thing she feels.

17 THE COURT: You agree with what she said?

22 THE COURT: Well, but you retained Ms.
23 Sullivan. Right?

24 THE DEFENDANT: I did, yeah.

25 THE COURT: And she has represented you

1 now for -- I think I looked, and your case is over two
2 years old.

3 THE DEFENDANT: Yeah.

4 THE COURT: And so she's been your
5 attorney now for over two years. Correct?

6 THE DEFENDANT: We started out good, but
7 we made bad turns, I guess.

8 THE COURT: Well, that happens sometimes.
9 Sometimes the attorneys and their clients don't always
10 see eye to eye. That's part of the process.

11 But what I've got to decide is whether
12 it's appropriate under all the circumstances to allow Ms.
13 Sullivan to withdraw. And then I would -- either you
14 would have to retain another new attorney. Or if you
15 can't afford one, then I would, either I would or another
16 Judge would appoint someone to represent you.

17 Do you understand that?

18 THE DEFENDANT: Yeah.

19 THE COURT: Is that how you want to
20 proceed?

21 THE DEFENDANT: I mean, that sounds good
22 to me.

23 THE COURT: Are you going to --
24 financially, are you going to be in a position to retain
25 a new attorney?

1 THE DEFENDANT: I doubt it.

2 THE COURT: Well, that's something that
3 would have to be decided. You would have to fill out
4 what's called a financial affidavit. And then either I
5 would or another Judge, probably be another Judge, would
6 take a look at it and decide, based on your current
7 financial situation, whether or not the Judge believes
8 that you were financially able to retain another
9 attorney.

10 Do you understand?

11 THE DEFENDANT: Yeah.

12 THE COURT: If he or she decided that you
13 could, then that would be what you would have to do. If
14 you have enough financial resources or assets to retain
15 another attorney, then that's what you would have to do.

16 If you do not have enough resources, then
17 the Court can appoint someone to represent you.

18 Do you understand?

19 THE DEFENDANT: Yeah.

20 THE COURT: But also under either
21 scenario, it's probably going to move your case -- and by
22 move your case, I mean move sentencing back for several
23 months.

24 Do you understand?

25 THE DEFENDANT: Yeah.

1 THE COURT: Well, I mean, a new attorney
2 is going to have to have enough time, whether they're
3 retained or appointed, to get up to speed in your case,
4 and understand everything, and probably have discussions
5 with the government about issues that might arise during
6 your sentencing.

7 Do you understand?

8 THE DEFENDANT: Yeah. Yeah, I understand.

14 THE COURT: That's not going to happen.

15 THE DEFENDANT: That's not going to
16 happen.

17 THE COURT: That's not how we do it. No,
18 sir.

19 THE DEFENDANT: Well...

20 THE COURT: Mr. Autry, you don't want it
21 done that way anyway. You want to be sure that whenever
22 I sentence you, that I've considered everything I need to
23 consider, and that you're sentenced fairly.

24 || That's what you want. Right?

25 THE DEFENDANT: Yeah, I guess so.

1 || THE COURT: Well, I know so.

2 And so to say let's just go ahead and do
3 it while we're all sitting here, that's just not the way
4 we're going to handle things. We want to be sure we do
5 it the right way, and that whatever sentence you receive
6 is based on all the information that I have and I make
7 what I hope is the right decision. Okay?

8 THE DEFENDANT: Yeah.

11 THE DEFENDANT: No. No.

12 THE COURT: Any questions you have?

13 THE DEFENDANT: No. I ain't got no
14 questions. I'm thankful for what she done.

15 THE COURT: Do you -- bottom line, you
16 think the relationship, the attorney-client relationship
17 between and you and Ms. Sullivan has broken down.

18 || Is that correct?

19 || THE DEFENDANT: Yeah. Yeah.

20 THE COURT: And you, rightly or wrongly,
21 you don't have confidence in her continued representation
22 of you.

23 THE DEFENDANT: No. Uh-uh (negative
24 response).

25 THE COURT: Ms. Sullivan, you're telling

1 me you, based on everything in your experience and your
2 knowledge, you think the relationship has deteriorated to
3 a point that it would be in Mr. Autry's best interest to
4 have new counsel either appointed or retained?

5 MS. SULLIVAN: Yes, Your Honor.

6 THE COURT: Government have any anything
7 to say?

8 MS. BOSWELL: No, sir, Your Honor.

9 THE COURT: Well, I think in light of what
10 Ms. Sullivan said this morning -- obviously, it's a
11 little more concerning when we have retained counsel,
12 just because -- and especially counsel that has been
13 involved in the case for this extended period of time.

14 But based on the contents of the letters
15 that we've referred to previously, statements made by
16 Mr. Autry, the statements made by Ms. Sullivan, I'm going
17 to grant her verbal or oral motion to withdraw. And then
18 I'm going to refer the matter to the Magistrate Judge to
19 determine if Mr. Autry has the ability to retain counsel.
20 Or if not, to have counsel appointed to represent him for
21 sentencing -- I'll just say going forward. I don't know
22 what else might arise between now and when we come back.

23 Do you understand, Mr. Autry?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Is there anything else you

1 want to tell me? If there is, now is your time.

2 THE DEFENDANT: No. No. I ain't got
3 nothing else to say.

4 THE COURT: All right. Then that's what
5 we'll do. And so we'll refer this down -- do you have
6 any idea -- Judge York is not here today, I don't think.

7 THE CLERK: Yes, sir.

8 MR. MORROW: He is here today.

9 THE COURT: Okay. Well, I'm just -- I
10 thought maybe he was out.

11 We might see if -- I don't know, since
12 Mr. Autry is here, just to try to move the process along,
13 we might see if Judge York would have time for Mr. Autry
14 to complete a financial affidavit and then make a
15 determination on whether he's in a position to retain
16 counsel or whether we need to appoint counsel to
17 represent him.

18 Maurice, if you will, reach out to Judge
19 York's courtroom deputy and see where they are.

20 THE CLERK: Yes, sir.

21 THE COURT: Anything else, Ms. Sullivan?

22 MS. SULLIVAN: No, Your Honor.

23 THE COURT: Anything else, Mr. Autry?

24 THE DEFENDANT: No, sir.

25 THE COURT: Anything from the government?

1 MS. BOSWELL: No, sir.

2 THE COURT: All right. Thank you.

3 THE DEFENDANT: Thank you.

4 (End of Proceedings.)

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1 I, Kristi Heasley, do hereby certify that the
2 foregoing 23 pages are, to the best of my knowledge,
3 skill and ability, a true and accurate unredacted
4 transcript from my stenotype notes in the matter of:

5 UNITED STATES OF AMERICA

6 VS)
7) NO.1:20-cr-10063-STA
8 JASON WAYNE AUTRY) JACKSON, TENNESSEE
)

9 Dated this 14th day of August, 2023.

10

11

12 /s/ Kristi Heasley

13

14 Kristi Heasley, RPR
15 Official Court Reporter
16 United States District Court
17 Western District of Tennessee
18 Eastern Division

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